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Before the

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**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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Federal Communications Commission  
Office of Secretary

In the Matter of )  
Requests of U S WEST Communications, )  
Inc. for Interconnection Cost Adjustment )  
Mechanisms )

CC Docket 97-98  
CCB/CPD 97-12

**COMMENTS OF**  
**GST TELECOM, INC.**

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**COMMENTS OF  
GST TELECOM, INC.**

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GST Telecom, Inc. ("GST"), by its undersigned attorneys and pursuant to the Federal Communications Commission's ("FCC" or "Commission") rules, hereby submits these comments in response to the petition for declaratory ruling and contingent petition for preemption on interconnection cost surcharges filed by Electric Lightwave, Inc. ("ELI"), McLeodUSA Telecommunications ("McLeod") and NEXTLINK Communications, L.L.C. ("NEXTLINK") on February 20, 1997, in the above-captioned proceeding.

**INTRODUCTION AND SUMMARY**

GST, a wholly owned subsidiary of GST Telecommunications, Inc., is a diversified telecommunications company whose subsidiaries provide, among other services, competitive local exchange carrier ("CLEC") services in the Western and Southwestern regions of the United States in competition with U S WEST and GTE and, thus, is directly interested in all policies affecting interconnection prices.

GST supports the petition jointly filed by ELI, McLeod and NEXTLINK. GST urges the Commission to declare that the costs U S WEST seeks to recover through its Interconnection Cost Adjustment Mechanism ("ICAM") violate the Telecommunications Act of 1996 ("Act"). In particular, ICAM violates the Act because:

- ▶ ***ICAM yields exorbitant charges that will prevent interconnection.*** U S WEST proposes exorbitant ICAM charges that will create an insurmountable barrier to entry and stymie the development of local service competition. Driven by obvious economic incentives to maximize the size of ICAM, U S WEST's proposal is tantamount to a "blank check."
- ▶ ***ICAM subverts the interconnection negotiation and arbitration processes of the Telecommunications Act.*** The Act creates a balanced process through which interconnectors and incumbent LECs have an opportunity to reach a mutually agreeable means of introducing local competition. The Act specifies that interconnectors negotiate the prices, terms and conditions of interconnection; ILECs have a good faith duty to negotiate. If those negotiations fail, the Act directs state regulators to establish rates, terms and conditions through an arbitration process governed by specific cost standards. U S WEST's proposed ICAM circumvents the negotiation and arbitration process by creating a means for U S WEST to establish unilaterally interconnection charges.
- ▶ ***ICAM opens the door for U S WEST to double recover its costs and is premature.*** Many states have not developed permanent interconnection rates and are in the process of developing cost-based charges that conform with the requirements of the Act. U S WEST's ICAM inappropriately assumes that those as-yet uncompleted

proceedings will fail to yield rates that meet the statutory cost-based standard and fail to cover U S WEST's costs. Moreover, if states adopt U S WEST's ICAM and implement cost-based interconnection charges, U S WEST will have an unbounded opportunity to double recover its interconnection costs.

The Commission should resolve these very troubling departures from the Act in a declaratory ruling now. Without a declaratory ruling, states will face the administrative burdens of U S WEST's ICAM filings and U S WEST will have thrown up yet another roadblock to rival entrants by forcing them to become enmeshed in expensive and protracted state-by-state litigation on ICAM issues.

#### **I. ICAM YIELDS EXORBITANT CHARGES THAT WILL PREVENT INTERCONNECTION**

U S WEST proposes to recover strikingly exorbitant charges from competitors through ICAM. The table below shows ICAM charges that U S WEST has proposed in two of its states. It should be emphasized that these are monthly charges paid by competitors who interconnect, buy unbundled elements, or resell U S WEST's services.

STATE & ELEMENT	PROPOSED MONTHLY ICAM CHARGES
<b>Washington</b>	
Interconnection	\$144,000
Unbundled Elements	\$35,000
Resale	\$9,000
<b>Colorado</b>	
Interconnection	\$55,000
Unbundled Elements	\$15,556
Resale	\$2,500

Under U S WEST's ICAM, competitors that buy unbundled loops would pay the standard recurring and non-recurring interconnection and unbundled loop charges approved by the Washington Commission, plus \$144,000 a month for the interconnection ICAM, plus \$35,000 per month for the unbundled element ICAM.

U S WEST's ICAM charges are open-ended and set at U S WEST's unfettered discretion. In filings with state regulators, U S WEST unabashedly declares that it intends to recover more than \$1 billion in costs, and claims to have already incurred \$16 million in network rearrangement costs.<sup>1/</sup> U S WEST proposes to require quarterly payments from competitors with an annual "true up." Thus, if ICAM were adopted and if U S WEST claims that its ICAM expenses were more than \$1 billion, competitors would be forced to contribute even more to U S WEST in the annual "true-up" process. ICAM proposal is unsupported by cost documentation and fails to include any process or safeguards by which regulators or competitors can scrutinize or control such charges. ICAM is nothing more than a "blank check" to be drawn from the banks of U S WEST's new competitors to cover any and all U S WEST expenses.

As a supposed "cost-sharing" mechanism, ICAM embodies some of the worst economic and regulatory incentives imaginable. To maximize its ICAM revenues, U S WEST has an obvious financial incentive to inflate its cost estimates. If ICAM were adopted, U S WEST would have absolutely no incentives to minimize the network costs it claims under ICAM. Since

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<sup>1/</sup> See, e.g., for example, U S WEST Petition for Declaratory Ruling and Request for Agency Action, Utah Public Service Commission Docket No. 97-049, pp. 2-3 attached as Exhibit A to Petitioner's pleading.

U S WEST controls access to its cost data, as a practical matter, it would be nearly impossible to audit effectively ICAM and ensure that cost information is being accurately reported. State and federal regulators would need to engage in a wide-ranging and detailed audit to oversee ICAM and ensure that U S WEST was not acting on these anticompetitive incentives. Regulators would become mired in unresolvable, highly contentious auditing and costing disputes. This process is entirely inconsistent with federal and state policy objectives to instill dominant carriers with economic incentives that will result in the elimination of wasteful spending, increased efficiencies in operations, and improved customer service. Thus, contrary to the pro-competitive objectives of the Act and the Congressional intent to displace regulation with competition,<sup>2/</sup> ICAM would not move the industry towards a competitive marketplace, but instead would propel it backwards into outmoded and inadequate detailed regulatory oversight.

Moreover, since its competitors pay ICAM, U S WEST has powerful economic incentives to make ICAM as large as possible in order to raise its rivals' costs. Thus, not only would U S WEST profit from inflated ICAM payments, it would enjoy the added benefit of hindering competition by forcing its emerging competitors to pay. Under ICAM, new entrants cannot predict their costs since ICAM is set at U S WEST's sole discretion. For smaller entrants and for those proposing to serve higher cost areas, ICAM effectively forecloses entry. An interconnector in Washington, for example, that serves only a few customers in a rural community would be forced to pay "tribute" to U S WEST of \$144,000 for the right to

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<sup>2/</sup> The Conference Committee summed up the fundamental objectives of the Act: "to provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition." Joint Explanatory Statement of the Committee of Conference, pg. 1.

interconnect, plus interconnection charges irrespective of the traffic volumes or number of customers the competitor served. In that instance, ICAM charge may preclude this new competition entirely.

The overarching pro-competitive objectives of the Commission and the Act requires that the Commission declare ICAM inconsistent with the Act.

## **II. ICAM SUBVERTS THE INTERCONNECTION NEGOTIATION AND ARBITRATION PROCESSES OF THE TELECOMMUNICATIONS ACT**

ICAM is an interconnection charge unilaterally established by U S WEST and plainly not established through a negotiation or arbitration process. As such, it is directly contrary to the Act's requirements that interconnection charges be established through a specific and balanced process of negotiations or arbitrations before state commissions.

The Act creates the duty for incumbent carriers to negotiate in good faith the terms and conditions of interconnection.<sup>3/</sup> By the same token, the Act requires interconnectors to attempt to negotiate the prices, terms and conditions of interconnection. The Act provides that if those negotiations fail, state regulators must step in to arbitrate disputes and establish prices based on specific costing standards.<sup>4/</sup> ICAM represents U S WEST's effort to circumvent this process by creating an interconnection charge established at its sole discretion with no limit and little regulatory oversight. The charge would not be subject to negotiation, not set through the arbitration process, and not set subject to the Act's specific cost standards.

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<sup>3/</sup> 47 U.S.C. §251(c)(1).

<sup>4/</sup> 47 U.S.C. §252.



In U S WEST's vision of the future, for example, GST could negotiate with U S WEST for a \$10 unbundled loop price, but that price would be economically meaningless since U S WEST would be able to unilaterally change the unbundled loop price with an ICAM unbundled element charge. U S WEST could create the illusion of good faith negotiation by agreeing to low rates for unbundled elements or interconnection and then recover whatever it wants through the non-negotiable ICAM.

ICAM also undermines the arbitration process and the costing standards specified in the Telecommunications Act. The efforts of state commissions to arbitrate, and to determine costs and set interconnection rates, rates for unbundled network elements and resale rates, will be nullified if U S WEST is allowed to charge whatever it likes through ICAM. U S WEST could also use ICAM to require payment of any amounts that it failed to pursue in its interconnection negotiations. If dissatisfied with its negotiations, U S WEST's remedy under the Act is to pursue arbitration before state commissions or to reopen negotiations. If dissatisfied with an arbitration decision, U S WEST's statutory remedy is an appeal to federal district court. ICAM would render these statutory remedies meaningless.

### **III. ICAM OPENS THE DOOR FOR U S WEST TO DOUBLE RECOVER ITS COSTS AND IS PREMATURE**

U S WEST's ICAM creates a substantial risk of a double recovery of costs. If a state commission adopts U S WEST's ICAM proposal and implements the allegedly cost-based interconnection charges proposed by U S WEST, there is no process in place to ensure that the interconnection charges will cover different costs than ICAM. For example, in a proceeding

pending in Colorado,<sup>5/</sup> U S WEST proposes the following charges for access to and use of unbundled loops:

UNBUNDLED ELEMENT	RECURRING CHARGES	NON-RECURRING CHARGES
<b>2-wire loops</b>	\$27.94	
<b>4-wire loops</b>	\$52.90	
<b>ISDN extension</b>	\$20.13	
<b>Basic Installation, 1st loop</b>		\$109.51
<b>Basic Installation, add'l loops</b>		\$60.23
<b>Installation with Conformance testing, 1st loop</b>		\$176.01
<b>Installation with Conformance testing, add'l loops</b>		\$89.24
<b>Coordinated installation with testing, 1st loop</b>		\$224.67
<b>Coordinated installation with testing, add'l loops</b>		\$137.91
<b>Cable unloading and bridge tap removal</b>		\$557.02
<b>End Office Port, 1st Port</b>	\$1.54	\$112.07
<b>End Office Port, additional ports</b>	\$1.54	\$28.58

Presumably, U S WEST developed these rates to cover its estimate of the costs of providing those unbundled elements to its competitor/customers. The non-recurring charges should reflect the one-time costs associated with setting up and offering the individual unbundled network element. For example, the \$557 cable unloading and bridge tap removal charges are U S WEST's estimates of the one-time costs associated with conditioning a loop for competitors' high-capacity services. Yet, as U S WEST describes ICAM, it seeks to recover

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<sup>5/</sup> Re: The Investigation and Suspension of Tariff Sheets Filed by U S WEST Communications, Inc. With Advice Letter No. 2617 Regarding Tariffs for Interconnection, Local Termination, Unbundling, and Resale of Service, Docket No. 96S-331T. The table shown is from the prefled testimony of Brian Johnson.

the same one-time costs from competitors through ICAM.<sup>9/</sup> In Colorado, U S WEST proposes to recover \$15,556 a month from competitors who buy unbundled elements in addition to the recurring and non-recurring charges specified above. Thus, if the Colorado Commission adopted the non-recurring charges proposed by U S WEST under ICAM, it appears that competitors that buy U S WEST's unbundled loops will likely pay twice for the costs of making those loops available on an unbundled basis -- once in the form of ICAM and once in the form of U S WEST's non-recurring charges. Obviously, such double recovery should be prohibited. However, there is nothing in U S WEST's proposed ICAM that unambiguously distinguishes between the costs covered by its non-recurring charges and the one-time costs covered by ICAM.

Apart from the potential double recovery of costs, U S WEST's ICAM is premature in at least three respects. First, ICAM presumes that state commissions will adopt interconnection charges that fail to cover U S WEST's costs. However, many states have not yet concluded proceedings to set U S WEST's permanent interconnection rates. It is therefore not apparent that the regulatory process has failed to yield rates that adequately cover U S WEST's costs. Second, the costing and pricing provisions of the Commission's *Interconnection Order* have been stayed and appealed to the Eighth Circuit.<sup>10/</sup> Until the Court completes its

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<sup>9/</sup> U S WEST describes ICAM as "limited to one time or start up extraordinary charges for network rearrangements mandated by the Telecommunications Act for the convenience and use by USWC's competitors, and to facilitate USWC's existing customers ability to choose a different local exchange service provider." Application of U S WEST Communications, Inc. for the Interconnection Cost Adjustment Mechanism, Docket No. 97-049, Petition for Declaratory Ruling and Request for Agency Action, Utah Public Service Commission, pg 4 (Jan. 3, 1997).

<sup>10/</sup> Implementation of the Local Competition Provisions of the Telecommunications Act of  
(continued...)

review and remand proceedings are completed, it is premature to conclude that the Commission's interconnection rules will fail to cover all of U S WEST's costs.

Finally, U S WEST's interconnection revenues are the product of its interconnection prices and the demand for its interconnection services. The demand for interconnection is unknown, and probably unknowable until the permanent interconnection prices are developed. In many markets the introduction of competition creates substantial growth in demand and stimulates the development of new services. However, even if U S WEST faces high one-time network upgrade costs as a result of this new competition (and U S WEST has not proved that such extraordinary costs exist), interconnection revenues may more than cover those costs. It is simply premature to conclude that ICAM -- or any such extraordinary method of CLEC cost recovery -- is necessary.

#### **IV. A DECLARATORY RULING WILL EASE BURDENS ON STATE REGULATORS AND REDUCE ENTRY BARRIERS**

Although state regulators have not adopted U S WEST's ICAM proposal, ICAM proposals are pending throughout the states served by U S WEST. A declaratory ruling by the Commission that ICAM is fundamentally inconsistent with the Act would greatly aid state commissions and new entrants confronted by these proposals. Without a declaratory ruling, new entrants must intervene in and litigate and relitigate the same issues throughout U S

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<sup>17</sup>

(...continued)

1996, CC Docket 96-98, *First Report and Order*, 11 FCC Rcd 15499 (1996), *Order on Reconsideration*, 11 FCC Rcd 13042 (1996), *petition for review pending and partial stay granted, sub nom. Iowa Utilities Board et. al v. FCC*, No. 96-3321 and consolidated cases (8th Cir., Oct. 15, 1996), *partial stay lifted in part, Iowa Utilities Board et. al v. FCC*, No. 96-3321 and consolidated cases (8th Cir., Nov. 1, 1996).

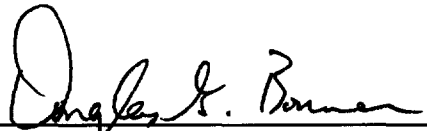
WEST's fourteen (14) state region. That needless, repetitive litigation greatly raises new entrants' costs and creates a barrier to entry. In addition, so long as ICAM petitions are pending in U S WEST's states, new entrants cannot be certain of their costs, and thus, cannot reasonably estimate what it will cost to enter the market and compete in those states. In short, a declaratory ruling would reduce entry barriers and promote competition.

## CONCLUSION

For the reasons described above, GST respectfully urges the Commission to declare that ICAM violates the Telecommunications Act of 1996.

Respectfully submitted,

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